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David Spooner
Assistant Secretary for Import Administration
Attention: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Inquiry into the Status of Ukraine as a Non-Market Economy
Country for Purposes of the Antidumping Law

Dear Assistant Secretary Spooner:

The American Iron and Steel Institute ("AISI"), on behalf of its U.S. member companies, hereby submits rebuttal comments on the issue of whether Ukraine should continue to be treated as a non-market economy ("NME") country for purposes of the antidumping law. AISI submits these rebuttal comments

pursuant to the Department's January 12, 2006 request for further comments in this matter.¹

In response to the Department's request for further comments, several U.S. companies doing business in Ukraine and organizations representing such companies have submitted comments in support of the revocation of Ukraine's NME status.² However, these comments do not provide any evidence to show that Ukraine has satisfied the requirements necessary for it to be considered a market economy.

To the contrary, the comments in question merely assert that Ukraine has made "progress . . . toward developing a market-oriented economy" and that

¹ See Changed Circumstances Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod From Ukraine: Opportunity to Comment on the Status of Ukraine as a Non-Market Economy Country and Extension of Final Results, 71 Fed. Reg. 2904 (Dep't Commerce Jan. 18, 2006) (request for comments and extension of final results) ("Request for Further Comments on Ukraine's NME Status").

² See Letter from United Technologies to the Department (Dec. 12, 2005) ("United Technologies Letter") at 1-2 (Public Document); Letter from Cargill to the Department ("Cargill Letter") at 1-2 (Public Document); Letter from the General Electric Company to the Department (Jan. 6, 2006) ("GE Letter") at 1 (Public Document); Letter from Ukraine-United States Business Council to the Department (Dec. 8, 2005) ("Business Council Letter") at 1-2 (Public Document); Letter from Motorola to the Department (Jan. 4, 2006) ("Motorola Letter") at 1-2 (Public Document); Letter from the PBN Company to the Department (Dec. 29, 2005) ("PBN Letter") at 1-2 (Public Document); Letter from P&G to the Department (Jan. 4, 2006) ("P&G Letter") at 1 (Public Document); Letter from the American Chamber of Commerce in Ukraine to the Department (Jan. 10, 2006) ("Chamber of Commerce Letter") at 1-2 (Public Document); Letter from Archer Daniels Midland Company to the Department (Jan. 9, 2006) ("Archer Daniels Letter") at 1 (Public Document); Letter from AES Corporation to the Department ("AES Letter") at 1 (Public Document). Significantly, each of these letters is dated before - and in one instance more than a month before - the Department's January 12, 2006 notice requesting further comments on the issue of Ukraine's NME status. See Request for Further Comments on Ukraine's NME Status, 71 Fed. Reg. at 2905. This fact raises questions about the inherent fairness of the process for other parties commenting on Ukraine's NME status such as AISI.

"market-oriented business conditions are continuing to improve" in Ukraine.³ AISI has acknowledged the progress and improvements that have been made by Ukraine in recent years. However, the issue is not whether Ukraine is making progress or is improving in its effort to become a market economy; the issue is whether Ukraine currently satisfies the six statutory factors set forth in Section 771(18)(B) of the Tariff Act of 1930, as amended, to be considered a market economy. And as the U.S. companies and organizations submitting comments themselves recognize, Ukraine does not yet satisfy the conditions necessary to constitute a market economy.⁴

Moreover, the comments from the U.S. companies and organizations in question provide nothing more than anecdotal information about their individual experiences in Ukraine.⁵ This anecdotal information does not constitute the type of

³ United Technologies Letter at 1 (Public Document); GE Letter at 1 (Public Document); see also Cargill Letter at 1 (Public Document) (same); Business Council Letter at 1 (Public Document) (same); Motorola Letter at 1-2 (Public Document) (same); PBN Letter at 1-2 (Public Document) (same); P&G Letter at 1 (Public Document) (same); Chamber of Commerce Letter at 2 (Public Document) (same); Archer Daniels Letter at 1 (Public Document) (same); AES Letter at 1 (Public Document) (same).

⁴ See United Technologies Letter at 1 (Public Document) (stating that designating Ukraine as a market economy "would recognize the significant and continuing progress Ukraine has made toward developing a market-oriented economy") (emphasis added); Cargill Letter at 1 ("This is not to imply that Ukraine has become a fully mature, stable, and transparent economy, but rather to acknowledge the genuine progress that has been made in moving Ukraine to an open economic system.") (emphasis added).

⁵ See id.; GE Letter at 1 (Public Document); Business Council Letter at 1 (Public Document); Motorola Letter at 1-2 (Public Document); PBN Letter at 1-2 (Public Document); P&G Letter at 1 (Public Document); Chamber of Commerce Letter at 2 (Public Document); Archer Daniels Letter at 1 (Public Document); AES Letter at 1 (Public Document).

information needed by the Department to assess conditions in the Ukrainian economy as a whole. As AISI has conclusively demonstrated in its previous comments, evidence regarding the Ukrainian economy as a whole shows that Ukraine has not satisfied any of the six statutory factors necessary for market economy status.⁶ There have been no changes or developments that would warrant a different conclusion, and none of the other commenters have shown to the contrary.

In fact, recent events in Ukraine have raised significant concerns regarding the future of that country's progress toward a market economy. President Viktor Yushchenko has failed to achieve the type of economic reforms that were promised and expected when he took office, and Ukraine has experienced great turmoil and instability under his administration.⁷ Indeed, his first prime minister's policies were so interventionist that they resulted in what one U.S. company submitting comments here, AES Corporation, deemed to be "very much a [command] control economy."⁸ The turmoil and instability in the country only heightened earlier this year when the Ukrainian Parliament ousted President

⁶ See Comments Submitted by the American Iron and Steel Institute Regarding the Non-Market Economy Status of Ukraine (July 11, 2005) (Public Document); Rebuttal Comments Submitted by the American Iron and Steel Institute Regarding the Non-Market Economy Status of Ukraine (Aug. 31, 2005) (Public Document); Supplemental Comments Submitted by the American Iron and Steel Institute Regarding the Non-Market Economy Status of Ukraine (Jan. 25, 2006) (Public Document).

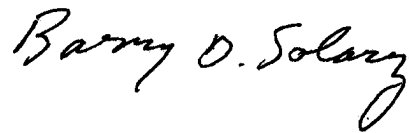
⁷ See "Ukraine: Shaky Ground for Foreign Investors," BusinessWeek, Jan. 9, 2006 ("Ukraine: Shaky Ground for Foreign Investors"), at 44, attached hereto as Exhibit 1.

⁸ Id.

Yushchenko's prime minister and the rest of his government.⁹ President Yushchenko now faces parliamentary elections in March in which his party is currently running third. The party leading in the polls is none other than that of Viktor Yanukovich, the anti-reform and pro-Russian candidate defeated by President Yushchenko in last year's presidential election.¹⁰ Clearly, the future of the reforms necessary for Ukraine to achieve market economy status is highly uncertain. Even those partial reforms that have been instituted to date in Ukraine have been placed in serious jeopardy by the political turmoil and instability plaguing the country.

For the reasons set forth above and in the previous comments submitted on behalf of AISI, the Department should continue to treat Ukraine as an NME country for purposes of the antidumping law.

Respectfully submitted,



Barry Solarz
Vice President, Public Policy, Tax, Trade

cc: Lawrence Norton
Shauna Lee-Alaia

⁹ Tom Warner, "Ukraine Parliament Dismisses Yekhanurov Government," Financial Times, Jan. 11, 2006, at 1, attached hereto as Exhibit 2.

¹⁰ See "Ukraine: Shaky Ground for Foreign Investors," at 44, attached hereto as Exhibit 1; Steven Lee Myers, "Recent Outcast Is Back in Favor in Ukraine Race," New York Times, Jan. 17, 2006, attached hereto as Exhibit 3.

EXHIBIT 1

EDITED BY ROSE BRADY

Ukraine: Shaky Ground For Foreign Investors

WHEN UKRAINIANS ELECTED Western-oriented reformer Viktor Yushchenko as President last December, hopes ran high for radical economic improvements. A former central banker with liberal views, Yushchenko, had promised to fight corruption and regulatory burdens on business and to promote greater openness

to foreign investment. Yet one year after his victory, the breakthrough has yet to occur.

The Orange Revolution has certainly had its achievements. The media, formerly tightly controlled, can now report freely. Yushchenko can also point to economic gains, notably the October privatization of steel mill Kryvorizhstal, which fetched \$4.8 billion when it was auctioned to Mittal Steel Co., the world's largest steelmaker. In October, Austria's Raiffeisen Bank paid \$1 billion for Aval Bank, Ukraine's second-largest. "Political risk has declined, and investors are much more confident," says Tomas Fiala, managing director of Kiev brokerage Dragon Capital.

Yet while Ukraine is looming larger on investors' radar screens, reforms have been slow and the country's economic performance has deteriorated. Gross domestic product likely grew by little more than 3% in 2005, far below the previous year's 12%. The cooling in part represents a fall in the price of steel and other metals, Ukraine's chief exports. But the economy also hasn't been helped by the policies of Yushchenko's first Prime Minister, Yulia Tymoshenko, dismissed in September after infighting within the Orange camp. She spooked business with interventionist measures such as promises to renationalize Ukrainian companies sold off under the previous regime. "It was very much a [command] control economy," says Garry Levesley, Ukrainian director for U.S. power company AES Corp. "The results from the business perspective were not good."

In contrast, current Premier Yuri Yekhanurov has helped to restore confidence by

saying he's against renationalization. The snag is that his government is little more than a caretaker until parliamentary elections in March, which will determine the next government's makeup. The stakes are high because of constitutional changes that come into force on Jan. 1. Under these rules, ministers, including the Prime Minister, will be appointed by the parliamentary majority rather than by the President.

Public disappointment

THE CHANGE could spell more trouble for the President. The pro-Yushchenko bloc faces competition from not only Tymoshenko's party but also from the party led by Viktor Yanukovich, the defeated candidate in last year's presidential election. Public disappointment with the revolution has meant rebounding support for the opposition. A recent poll by the Ukrainian Sociological Service put Yushchenko's party in third place, with 12.2% support.

Any governing coalition will have to include two of the three major parties, forcing Yushchenko's supporters either to team up with Tymoshenko or form an unholy alliance with the Yanukovich camp. If Tymoshenko wins more votes, she's sure to make her support conditional on participation in the new government. Analysts believe she hopes to get back her old job as Premier, risking a return to interventionist policies. With the President's powers clipped, the revolution's supporters split, and an uncertain battle ahead, no one should take the Orange Revolution's progress for granted. ■

—By Jason Bush in Kiev



YUSHCHENKO
Polls show his party is in third place

WORLD WRAPUP

JAPANESE SPREE

DECEMBER IS a busy month for shoppers the world over. But in Japan this year, it's the retailers themselves who have been the biggest spenders.

On Dec. 21, Wal-Mart Stores Inc. spent \$565 million to raise its stake in struggling Japanese retailer Seiyu to 53%. Trading house Marubeni and Advantage Partners, a private equity firm, finalized plans on Dec. 27 to raise their holding in supermarket chain Daiei to 67.7%. But the season's largest deal involves Seven & I Holdings, which owns Ito Yokado superstores and Seven-Eleven convenience stores in Japan and the U.S. On Dec. 26, Seven & I announced that it is spending \$1.1 billion to buy an initial 65% stake in Millennium Retailing, owner of the Seibu and Sogo department stores, in a move that will create Japan's largest retailing conglomerate, with sales of \$38 billion.

DON'T FENCE ME IN

A WINTRY chill has hit relations between the U.S. and Mexico. Just before the holiday break, the U.S. House of Representatives O.K.'d a plan to build 700 miles of high-tech fences along its southern border to keep out illegal migrants. The legislation, which the Senate is due to take up in February, would also make illegal entry into the U.S. a felony.

Mexican President Vicente Fox has called the legislation "disgraceful." And the Mexican Congress is lobbying lawmakers in other Latin American nations, along with those in Spain and Portugal, to oppose the fence. Peru, Honduras, and Guatemala have already signed on. So has Venezuelan President Hugo Chávez, a move which isn't likely to sway his many critics on Capitol Hill.

MYKOLA LAZARENKO/AP/WIDE WORLD

EXHIBIT 2

Copyright 2006 The Financial Times Limited
Financial Times (London, England)

January 11, 2006 Wednesday
Europe Edition 1

SECTION: FRONT PAGE - FIRST SECTION; Pg. 1

LENGTH: 417 words

HEADLINE: Ukraine parliament dismisses Yekhanurov government

BYLINE: By TOM WARNER

DATeline: KIEV

BODY:

Ukraine was plunged into fresh political **turmoil** yesterday as its parliament sacked the pro-western government of Yuri Yekhanurov after he was accused of striking a poor deal to end the gas price dispute with Russia.

The no-confidence vote, backed by 250 of parliament's 450 members, came after it emerged that a five-year deal signed between Moscow and Kiev last week would force the Ukraine to pay much more for its gas imports.

The vote was a heavy blow to the presidency of Viktor Yushchenko, who now faces the prospect of working with a hostile government after parliamentary elections in March. Ukraine's new constitution, which came into force on January 1, has stripped the president of the power to appoint the cabinet.

Supporters of Volodymyr Lytvyn, the centrist speaker of parliament, joined pro-Russian opponents of Mr Yushchenko and supporters of former prime minister Yulia Tymoshenko in the vote to sack Mr Yekhanurov.

Mr Lytvyn accused the prime minister of dodging questions about the gas deal.

The deal with Gazprom, Russia's state gas company, came after Russia reduced gas supplies into Ukraine's pipelines by 25 per cent.

It sets the price of Ukraine's gas imports at Dollars 95 per thousand cu m for the first half of 2006, almost doubling the previous cost. The five-year deal also fixes the transit fees Ukraine can charge on gas exported by Russia but only caps the cost of Ukraine's gas imports for six months.

Officials at Gazprom say they can adjust the price in line with the market using a mechanism that has not yet been agreed. "No one has any guarantee that there will be gas for Dollars 95," Mr Lytvyn said.

Mr Yushchenko, who was in Kazakhstan yesterday, said he did not recognise the vote.

"The parliament's decision about the dismissal of the government was unconstitutional," Mr Yushchenko said.

Hryhory Nemyria, an adviser to Ms Tymoshenko, said Mr Yekhanurov and his cabinet would probably stay on as the acting government for 60 days, which is the maximum allowed after dismissal.

A caretaker government would then serve until a new government was formed by the newly elected parliament.

Yesterday's vote raises the possibility that the pro-Russian opposition, which held power until the Orange Revolution in 2004, could attempt to regain power before the March elections by using powers granted to parliament under a revised constitution.

Ukraine parliament dismisses Yekhanurov government Financial Times (Lon

Gazprom shares rose 13 per cent yesterday to a record high of 220 roubles on the first day of trading after the Russian Christmas holiday.

LOAD-DATE: January 10, 2006

EXHIBIT 3

Copyright 2006 The New York Times Company
The New York Times

January 17, 2006 Tuesday
Late Edition - Final

SECTION: Section A; Column 6; Foreign Desk; Pg. 1

LENGTH: 1252 words

HEADLINE: Recent Outcast Is Back in Favor In Ukraine Race

BYLINE: By STEVEN LEE MYERS

DATeline: KIEV, Ukraine, Jan. 14

BODY:

A campaign ad, broadcast repeatedly on television here, shows a man basking in the adulation of flag-waving crowds reminiscent of the protests that overturned the fraudulent election for president in 2004. But he is not Viktor A. Yushchenko, who rode those protests to the presidency, vowing to turn Ukraine into a free and prosperous democracy.

He is the man Mr. Yushchenko defeated, Viktor F. Yanukovich, the chosen heir of a discredited and unpopular government, who would have been president but for those huge street demonstrations and international diplomatic pressure.

A year ago, Mr. Yanukovich appeared disgraced, abandoned even by his own supporters. Now he leads a party predicted to win the most seats in the parliamentary elections that are only a little more than two months away.

Mr. Yushchenko, on the other hand, has been discredited by scandals, a worsening economy and internal disputes over policy that led him to fire a popular prime minister.

At a minimum Mr. Yanukovich could have a decisive role in choosing the new -- and newly empowered -- prime minister. He could even become prime minister himself, sharing power with his bitter rival. "We have set this goal: to win the election," Mr. Yanukovich said in an interview at his party headquarters in a 19th-century mansion here.

The March 26 election, in which thousands of candidates from 45 parties are competing for 450 parliamentary seats, will be the first electoral test of the political changes that Mr. Yushchenko promised during what became known as the Orange Revolution. But after a year of turmoil that culminated in popular anger over his handling of a dispute with Russia over natural gas, the prospects for Mr. Yushchenko's coalition are not promising.

In a poll released Friday by the Democratic Initiative Fund, Mr. Yanukovich's Party of Regions was favored by 31 percent of those who responded, compared with 13 percent for Mr. Yushchenko's bloc, led by the faction Our Ukraine. That is 3 percentage points behind the bloc of Yulia V. Tymoshenko, who served as his first prime minister until Mr. Yushchenko dismissed her in September amid mutual accusations of corruption.

"The work of the authorities has been ineffective," Mr. Yanukovich said, when asked about his striking reversal of fortune. "Everything that happened this year worsened the economic levels, increased **instability** inside the country and worsened the image of our state in the world. For those in **Ukraine** that supported Mr. Yushchenko, it was a year of disappointment. For the part that did not, it was a year of trial, including for myself."

The rebound of Mr. Yanukovich is, in fact, less about his successes than Mr. Yushchenko's failings since he was inaugurated a year ago.

While Mr. Yushchenko is often portrayed abroad as a reform-minded democrat seeking to realign Ukraine toward Europe and the United States, his reputation at home has suffered from one problem after another.

"He has a Gorbachev syndrome," said Mychailo Wynnyckyj, a professor of sociology at the University of Kiev-Mohyla Academy, referring to the former Soviet leader, Mikhail S. Gorbachev. "He looks better abroad than he does at home."

In the gas dispute, for example, Mr. Yushchenko appeared to have emerged victorious, having resisted Russia's demands for a nearly five-fold increase from the \$50 per thousand cubic meters Ukraine was paying under a 2004 agreement.

But critics soon pounced on the new deal, which set the price on average at \$95, publicizing details that the government had not, including the fact that the price was fixed for only six months and is likely to rise again. Members of Parliament and industrialists warned of harm to an already feeble economy and questioned the role of a murky gas-trading company with ties to Russia's energy monopoly, Gazprom.

Last Tuesday, Parliament voted to oust Mr. Yushchenko's prime minister and the rest of the government. At the time of the vote Mr. Yushchenko was in Kazakhstan, where he met with President Vladimir V. Putin of Russia to praise the deal as mutually beneficial to both countries.

In a televised interview on Friday night, Mr. Yushchenko called those who voted against the government "the fifth column, for which a petty corporate or party interest is superior to stability in Ukraine now."

The political **turmoil** has, for now, worsened his split with Ms. Tymoshenko, the charismatic populist whose public role in the Orange Revolution was second only to his.

Coalitions in **Ukraine**, however, are ever shifting, and one of her advisers, Hyrthory M. Nemyrya, said Ms. Tymoshenko still hoped for an accommodation that would reunite the forces that defeated Mr. Yanukovich, President Leonid D. Kuchma's chosen successor.

"The only choice for him is to choose between Tymoshenko and Yanukovich," Mr. Nemyrya said of Mr. Yushchenko.

Mr. Yanukovich, in contrast to Mr. Yushchenko, has succeeded in holding together his supporters, predominantly Russian speakers in the industrialized east and south, areas where Mr. Yushchenko has been unable to gain support.

Mr. Yanukovich, a former mechanic who rose through the ranks of regional government in Donetsk before serving as prime minister, remains his party's leader despite his defeat and other liabilities, including having served almost four years in prison after a conviction for robbery and assault as a young man.

In the 2004 election Mr. Yanukovich had strong support from the Kremlin. He still vows not to change Ukraine's foreign policy at the expense of Russia, though he had to distance himself in the gas dispute.

"It was wrong to try to corner Ukraine," he said of Russia.

Mr. Yushchenko's foreign minister, Boris I. Tarasyuk, contends that despite Mr. Yanukovich's seemingly stronger position, Ukrainians overwhelmingly support the course Mr. Yushchenko has set: integrating the country into the European Union and NATO, while building a democratic society and a market economy.

He predicted a pro-Yushchenko majority in Parliament, saying, "There will again be a coalition that supports the president."

Ukraine's new Parliament will have expanded powers, including the role of electing the prime minister, who has been appointed by the president.

Mr. Wynnyckyj, the professor of sociology, predicted a different outcome: a chaotic period of political instability like Italy's ever-revolving Parliaments in the 1970's and 80's.

He said that even if a new government could be formed, it would soon collapse, forcing new elections by 2007, if not sooner.

"There's no chance of a coalition because the personalities are getting in the way," he said.

Much depends on the fate of smaller parties, 9 or 10 of which could each clear the 3 percent threshold for winning seats. A new one is an alliance of the Party of Reforms and Order, a liberal party that was once Mr. Yushchenko's, and Pora, the youth group that provided much of the zeal during the protests of 2004.

One of Pora's leaders, Vladyslav V. Kaskiv, even works as a presidential adviser, but decided to run independently out of a belief that Ukrainian politics needed a new generation of leaders. He said the three most prominent ones these days all possessed "the same values."

Mr. Kaskiv was optimistic, however, about one thing.

"Politics cannot return to what it was before," he said, articulating perhaps the greatest success of the Orange Revolution. "It could be better or worse, but it will be a democratic process."

URL: <http://www.nytimes.com>

GRAPHIC: Photos: The party of Viktor F. Yanukovich, above, has topped a poll in Ukraine. Vladyslav V. Kaskiv, right, a youth group leader, is running for a seat in Parliament. (Photographs by Joseph Sywenkyj/Redux, for The New York Times)(pg. A8)

LOAD-DATE: January 17, 2006